

Senate Bill 170

By: Senators Adelman of the 42nd, Shafer of the 48th, Johnson of the 1st, Rogers of the 21st, Reed of the 35th and others

**AS PASSED**

**AN ACT**

To amend Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated, relating to general authority, duties, and procedure for state purchasing, so as to provide legislative findings; to provide definitions; to prohibit certain companies that have certain business operations in Sudan to bid on or submit a proposal for a state contract; to provide for exceptions; to provide for certain certifications; to provide penalties for false certifications; to provide for periodic reviews; to provide for related matters; to provide for severability; to provide an effective date; to repeal conflicting laws; and for other purposes.

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

**SECTION 1.**

The General Assembly finds that:

- (1) Since 1993, the United States Secretary of State has determined Sudan is a country whose government has repeatedly provided support for acts of international terrorism, thereby restricting United States assistance, defense exports and sales, and financial and other transactions with the Government of Sudan.
- (2) On September 21, 2004, in addressing the United Nations General Assembly, President George W. Bush affirmed the Secretary of State's finding and stated, "At this hour, the world is witnessing terrible suffering and horrible crimes in the Darfur region of Sudan, crimes my government has concluded are genocide."
- (3) The federal government has imposed sanctions against the Government of Sudan since 1997. These sanctions are monitored through the United States Treasury Department's Office of Foreign Assets Control (OFAC).
- (4) On December 31, 2007, President George W. Bush signed the Sudan Accountability and Divestment Act (Public Law 110-174). The legislation was passed by the Senate and the House of Representatives unanimously. That act authorizes state and local governments to adopt policies to divest from and prohibit contracts with problematic

companies operating in Sudan's oil, power, mineral, and military sectors. That act also prohibits the federal government from contracting with these companies.

## SECTION 2.

Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated, relating to general authority, duties, and procedure for state purchasing, is amended by adding a new Code section to read as follows:

"50-5-84.

(a) As used in this Code section, the term:

(1) 'Business operations' means engaging in commerce in any form in Sudan, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(2) 'Company' means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making profit.

(3) 'Government of Sudan' means the government in Khartoum, Sudan, that is led by the National Congress Party, formerly known as the National Islamic Front, or any successor government formed on or after October 13, 2006, including the coalition National Unity Government agreed upon in the Comprehensive Peace Agreement for Sudan, and does not include the regional government of southern Sudan.

(4) 'Marginalized populations of Sudan' include, but are not limited to, the portion of the population in the Darfur region that has been genocidally victimized; the portion of the population of southern Sudan victimized by Sudan's north-south civil war; the Beja, Rashidiya, and other similarly underserved groups of eastern Sudan; the Nubian and other similarly underserved groups in Sudan's Abyei, southern Blue Nile, and Nuba Mountain regions; and the Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

(5) 'Military equipment' means weapons, arms, military supplies, and equipment that may readily be used for military purposes, including, but not limited to, radar systems, military-grade transport vehicles, or supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

(6) 'Mineral-extraction activities' include the exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides (ore), including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc.

(7)(A) 'Oil related activities' include:

- (i) Exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading oil; and
- (ii) Constructing, maintaining, or operating a pipeline, refinery, or other oil field infrastructure.

(B) A company shall not be considered to be involved in oil related activities if:

- (i) The company is involved in the retail sale of gasoline or related consumer products in Sudan but is not involved in any other activity described in subparagraph (A) of this paragraph; or
- (ii) The company is involved in leasing or owns rights to an oil block in Sudan but is not involved in any other activity described in subparagraph (A) of this paragraph.

(8) 'Power-production activities' means any business operations that involve a project commissioned by the National Electricity Corporation of Sudan or other similar entity of the government of Sudan whose purpose is to facilitate power generation and delivery, including establishing power-generating plants or hydroelectric dams, selling or installing components for the project, or providing service contracts related to the installation or maintenance of the project.

(9) 'Scrutinized company' means a company that is conducting business operations in Sudan that is involved in power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, but excludes a company that can demonstrate any of the following:

- (A) Its business operations are conducted under contract directly and exclusively with the regional government of southern Sudan;
- (B) Its business operations are conducted under a license from the Office of Foreign Assets Control or are expressly exempted under federal law from the requirement to be conducted under such a license;
- (C) Its business operations consist of providing goods or services to marginalized populations of Sudan;
- (D) Its business operations exclusively consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;

(E) Its business operations consist of providing goods or services that are used only to promote health or education;

(F) Its business operations with the Government of Sudan will be voluntarily suspended for the entire duration of the contract for goods or services for which they have bid on, or submitted a proposal for, a contract with a state agency; or

(G) It has adopted, publicized, and is implementing a formal plan to cease business operations within one year and to refrain from conducting any new business operations.

(b)(1) A scrutinized company shall be ineligible to, and shall not, bid on or submit a proposal for a contract with a state agency for goods or services.

(2) Notwithstanding paragraph (1) of this subsection, the Department of Administrative Services may permit a scrutinized company, on a case-by-case basis, to bid on or submit a proposal for a contract with a state agency for goods or services if it is in the best interests of the state to permit the scrutinized company to bid on or submit a proposal for one or more contracts with a state agency for goods or services.

(3) In making this determination, the Department of Administrative Services may utilize the following resources:

(A) Verification by an independent third party or nonprofit organization that a company is either:

(i) Undertaking significant humanitarian efforts in conjunction with an international organization, the Government of Sudan, the regional government of southern Sudan, or a nonprofit organization to benefit one or more marginalized populations of Sudan. The party or organization providing the verification or an independent third party shall evaluate and certify that the significant humanitarian efforts are substantial in relation to the company's Sudan business operations; or

(ii) Through engagement with the Government of Sudan, materially improving conditions for the genocidally victimized population in Darfur; and

(B) A National Interest Waiver issued by the President of the United States excluding a company from the federal contract prohibitions provisions of the Sudan Accountability and Divestment Act (Public Law 110-174).

(c)(1) A state agency shall require a company that submits a bid or proposal with respect to a contract for goods or services, that currently or within the previous three years has had business activities or other operations outside of the United States, to certify that the company is not a scrutinized company.

(2) A state agency shall not require a company that submits a bid or proposal with respect to a contract for goods or services, and that currently or within the previous three

years has had business activities or other operations outside of the United States, to certify that the company is not a scrutinized company, if the company has obtained permission to bid on or submit a proposal for a contract with a state agency for goods or services pursuant to paragraph (2) of subsection (b) of this Code section.

(d)(1) Not later than August 1, 2009, the Department of Administrative Services shall file a written notice to the United States Attorney General detailing the requirements contained in this Code section, as required by the federal Sudan Accountability and Divestment Act of 2007 (P. L. No. 110-174).

(2) Annually thereafter, the Department of Administrative Services shall file a publicly available report to the General Assembly and the United States Attorney General outlining the actions taken under this Code section.

(3) The Department of Administrative Services shall report to the Attorney General of Georgia the names of companies determined to have submitted false certifications under subsection (c) of this Code section, together with information as to the false certification, and the Attorney General shall determine whether to bring a civil action against the companies. The companies shall pay all costs or fees incurred in a civil action, including those for investigations that led to the discovery of a false certification.

(e) If the Department of Administrative Services determines that a company has submitted a false certification under subsection (c) of this Code section, the company shall be subject to:

- (1) The company shall be liable for a civil penalty in an amount that is equal to the greater of \$250,000.00 or twice the amount of the contract for which a bid or proposal was submitted;
- (2) The state agency or the Department of Administrative Services may terminate the contract with the company; and
- (3) The company shall be ineligible to, and shall not, bid on a state contract for a period of not less than three years from the date the state agency determines that the company submitted the false certification.

The Department of Administrative Services shall report to the Attorney General the name of the company that the Department of Administrative Services determined had submitted a false certification under subsection (c) of this Code section, together with its information as to the false certification, and the Attorney General shall determine whether to bring a civil action against such company. If such company is found to have submitted a false certification, such company shall be ordered to pay all costs and fees incurred by the state in the civil action, including all costs incurred by the state agency and the Department of

Administrative Services for investigations that led to the finding of the false certification and all costs and fees incurred by the Attorney General.

(f) The General Assembly shall periodically review this Code section and determine if any of the following events have occurred which should be construed and deemed to be a basis for repealing this Code section:

- (1) The Congress or President of the United States declares the Darfur genocide has been halted for at least 12 months;
- (2) The United States revokes all sanctions imposed against the Government of Sudan;
- (3) The President of the United States has certified to Congress that the Government of Sudan has honored its commitments to do all of the following:
  - (A) Abide by United Nations Security Council Resolution 1769 (2007);
  - (B) Cease attacks on civilians;
  - (C) Demobilize and demilitarize the Janjaweed and associated militias;
  - (D) Grant free and unfettered access for delivery of humanitarian assistance; and
  - (E) Allow for the safe and voluntary return of refugees and internally displaced persons;
- (4) The Congress or President of the United States, through legislation or executive order, declares the contract prohibition of the type provided for in this Code section interferes with the conduct of United States foreign policy; or
- (5) Such other circumstances as the General Assembly determines to warrant the discontinuance of the provisions of this Code section."

### **SECTION 3.**

(a) If any one or more provisions, sections, subsections, sentences, clauses, phrases, or words of this Act or the application thereof to any person or circumstance is found to be invalid, illegal, unenforceable, or unconstitutional, the same is hereby declared to be severable, and the balance of this Act shall remain effective and functional notwithstanding such invalidity, illegality, unenforceability, or unconstitutionality.

(b) The General Assembly hereby declares that it would have passed this Act and each provision, section, subsection, sentence, clause, phrase, or word thereof irrespective of the fact that any one or more provisions, sections, subsections, sentences, clauses, phrases, or words were declared invalid, illegal, unenforceable, or unconstitutional, including, but not limited to, each of the engagement, divestment, and prohibition provisions of this Act.

**SECTION 4.**

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

**SECTION 5.**

All laws and parts of laws in conflict with this Act are repealed.